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STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF THE TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

Office of the Secretary
MAY 16 2000
Part of
Public Record

The Transport Workers Union of America, AFL-CIO ("TWU") hereby submits these brief comments, limited to the "cram down" issue, in response to the Board's March 31, 2000 Order requesting comments on STB merger regulations.

We wish to make it clear that TWU has joined in the comments of the TTD on the cram down issue, and we strongly urge the Board to adopt this position. However, taking cognizance of the fact that TCU, joined by a number of other Unions, have submitted to the Board a compromise position, TWU wishes to urge that certain critical adjustments be made in this compromise position, should the Boards choose to use it as the basis for proposing its own regulations on the matter.

TWU Proposals Regarding Conditions Regulating Cram Down that are Being Proposed by the TCU:

1. We urge that any set of rules adopted by the STB that is similar to that proposed by TCU must state without ambiguity that the "organizations to be included in the procedure should include all Labor organization who have members in a given class or craft on either of the carriers which are parties to a transaction. Failure to make clear that this is the case could result in the practical disenfranchisement of the employees at a given facility, depriving them of their ability to have a voice on the question of which collective bargaining agreement ought to apply to them in the event that their facility is affected by a consolidation or coordination or transfer of work with which requires a choice to be made between collective bargaining agreements.

2. The procedures and conditions outlined by TCU for choosing between collective bargaining agreements at a given consolidated, coordinated or merged facility ought to be triggered not simply by the merged carrier effecting an operational change, but by its making a decision to effect such a change, and then (if the union(s) involved are unwilling to proceed to choose an agreement immediately) making a showing to the STB that the operational change being effected requires that only one agreement prevail at the affected facility. Once the carrier makes such a showing to the STB, the STB shall invoke the procedures outlined by TCU.

3. It must be clear that neither the STB nor a carrier can have any involvement with a union decision as to which agreement should prevail at a given facility, unless one union party or another to arbitration requests testimony from the carrier.

4. Any rule adopted embracing the basic concepts of the TCU position should include provisions setting out time deadlines for the various procedures involved, as well as other strictures on them. We propose the following:

a. The union parti(es) to the procedure or choosing an agreement should spend no more than thirty days reviewing the agreements to determine which is most advantageous to the employees.

b. In the event that arbitration is required, the following strictures should prevail:

(1) The Arbitrator should be selected by the union(s) involved from a list provided by the NMB. Each party to the arbitration should bear an equal share of the arbitrator's fees; and the arbitrator should engage in no ex parte conversations with either party to the arbitration.

(2) Once an arbitrator is chosen, the parties will make every effort to schedule the matter so that the hearing can be closed no more than fourteen days after it opens; thereafter, the arbitrator should render his decision within thirty days.

(3) In all cases the issue for the arbitrator shall be: at a given facility, which of the two (or more) agreements is most beneficial to the employees involved as to rates of pay, rules and working conditions, including crew consist agreements, and the protection of seniority rights. The arbitrator shall give no weight to the circumstance of how many employees at the facility in question were previously covered by one agreement, and how many were covered by the other.

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